IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 293 OF 1995

The State of Maharashtra ..Appellants

versus

Ganpat Tukaram Patne & Ors. ..Respondents

Mr. S. N. Gawade, A.G.P. for the Appellants - State.

CORAM : D. G. DESHPANDE,J.

DATE : 19TH JANUARY,2005

ORAL ORDER :

1. Heard learned AGP for the Appellants - State. Respondents have been served. Nobody is present for them.

2. This Appeal is filed by the State challenging the order of Civil Judge, Senior Division, Ratnagiri in Land Reference No. 8 of 1990. The Reference was at the instance of the claimants - Respondents. 34 Acres of land from out of Survey No. 173 Hissa No.A-1 from Village Bharane was acquired for Natuwadi project. SLAO awarded compensation at Rs.100/= per Are for Warkas and Rs.2/- per are for Potkharab. Claimants claimed

compensation at Rs.1,000/- per Are and according to them there is no Potkharab land and the acquired land was abutting Bombay Goa Highway. Hence this Appeal.

3. Learned AGP pointed out that claimants did not adduce any evidence at all to show that they were entitled for enhancement of compensation. The claimants did not examine anybody to prove any sale instances. Claimants did not file certified copies of the sale deeds. But remained contented by filing certified copy of Index II in respect of sale transaction to which neither the claimants was a party nor he was a witness. The lower court heavily relied upon Index II repeatedly holding that it is a public document, that certified copies of public documents are admissible though there is presumption as regards public document and there is no evidence in rebuttal and came to the conclusion that from the contents of Index II rate of similarly situated land comes to Rs.2,000/- per Are. The only challenge is that the land is not situate abutting Bombay Goa Highway, therefore rate of Rs.500/- per Are is reasonable. Notification under Section 4 is of 1978. There appears to be some serious mistake on the part of the lower court in taking on record certified documents and exhibiting them and referring to them in the deposition. Witness P.W.

1 Rajaram Tukaram Patane for the claimants, in his evidence stated that he has filed Index II public document, certified copy in respect of sale transaction pertaining to year 1986 i.e. within reasonable period of the date of notification under Section 4. Then further he has stated the rate in respect of land in vicinity as per Index II filed along with Exhibit 27. Record of the lower court when perused shows that in Index No.II referred to by the witness there are 5 certified copies in respect of five different sale deeds, only one joint collective number is given as Exhibit 29 what is written as 1 to 10. Witness P.W. 1 has never referred to Exhibit 29 nor Exhibit No.29 appears to have been given while he was being examined. The lower court in its order has stated that it has relied upon Exhibit 29 which is only compilation of five documents under one exhibit number. There is no index exhibited as Exhibit 27.

4. It is not therefore clear whether the witness P.W. 1 was referring to all the five sale certified copies collectively exhibited as Exhibit 29. Even the lower court has not stated anywhere that Exhibit 29 collectively is for five copies.

5. Secondly, the learned AGP contended that filing of copies of Index II would not be considered

as sufficient proof. Firstly, because copies of the Sale Deeds are not there either certified or original or secondly neither the vendor or the vendee of any of the five sale instances were examined by the witness. He also contended that no oral evidence is given by the claimants to show the distinct factors of the five sale deeds and the land under acquisition. Claimants have nowhere stated whether the lands under the five sale deeds and the acquired land had any resemblance or similar characteristic which were relevant for the purpose of fixing compensation or the price.

6. I find considerable force in the submissions, copy of Index II filed by the claimants do only show the area which was the subject matter of the sale deed, the location and situation of the property, consideration paid, but it does not give other particulars which are necessary and material for the purpose of finding out whether the prices paid were reasonable, proper and whether they can be compared with the prices of the acquired land or value of the acquired land. P.W. 1 in his evidence only says that the said lands in Index II are visible from my land which is acquired. This is a very vague statement. If the land under acquisition is at a height then the land upto miles from the acquired land could be visible. Visibility of the

land from the acquired land does not prove its proximity. There is no evidence therefore that the features of the acquired land were identical with the lands which are the subject matter of the five certified copies. While giving evidence about Index II witness admitted the land is adjacent to Bombay Goa Highway and he has no evidence to show that his land was adjacent to or abutting Bombay Goa Highway.

7. Secondly, the notification under section 4 is of 1978 and sale instances relied upon by the claimants through Index II are of 1986, the trial court very surprisingly observed that they are within a reasonable period. By no stretch of imagination period of five years after notification under section 4 i.e. in 1986 could be considered as pertaining to reasonable period or reasonable or close to 1979.

8. Therefore both on facts as well as in law the order of trial court is totally unjustified compensation is enhanced without any basis and without any evidence. It is true that grant of Rs.2/- per Are for Potkharab land is wholly unjustified. Claimants are therefore entitled to flat rate of per.100/- per are for all the land acquired.

9. In view of these facts, appeal is partly allowed. The claimant will be entitled to Rs.100/- per Are i.e. Rs.34,000/- only with solatium and

interest as awarded on that amount by the trial court. The appellants are entitled to costs of this Appeal. Appeal disposed of accordingly.

19.1.2005 (D.G. DESHPANDE, J.)